

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
THE CARBORUNDUM COMPANY,

Appellant,

v.

SOUTHWEST AIR POLLUTION  
CONTROL AUTHORITY,

Respondent.

PCHB Nos. 927, 936,  
965 and 982

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

Nature of Case: Ten \$150 civil penalties for alleged violations  
of Section 4.02 of Regulation 1 and/or WAC 18-04-040(1)(b)  
and six \$250 civil penalties for alleged violations  
of Section 5.03 of Regulation 2.

Formal Hearing: March 11, 1976.

Board Members Present: Chris Smith, Chairman, W. A. Gissberg  
and Walt Woodward.

Presiding Officer: David Akana, hearing examiner.

Court Reporter: Eugene E. Barker.

For Appellant: Robert M. Schaefer, of Blair, Schaefer, Hutchison,

Wynne, Potter and Horton, attorneys.

For Respondent: James D. Ladley, of Boettcher, LaLonde, Kleweno,  
Lodge, Ladley, Witteman, Schreiber and Kelly, attorneys.

#### FINDINGS OF FACT

1. Pursuant to RCW 43.21B.260, respondent's Regulations 1 and 2 are noticed. Section 2.10 of Regulation 1 and Section 2.04 of Regulation 2 provide for a civil penalty of up to \$250 per day for the violation of each regulation.

2. The material facts in these matters are not in dispute. Appellant admits that it caused the emission of an air contaminant which violated Section 4.02 of Regulation 1 and/or WAC 18-04-040(1)(b) on the following days: September 22, October 10, 15, 30; November 5, 26, and December 2, 29 of 1975; January 26 and February 23 of 1976. For each of these violations, appellant was assessed a \$150 civil penalty which it appealed to this Board on jurisdictional grounds.

3. Appellant admits that it caused the emission of an odorous gas which violated Section 5.03 of Regulation 2 on the following days: September 5, 8, 9, 11, 22, and 24 of 1975. For each of these violations, appellant was assessed a \$250 civil penalty which it appealed to this Board on jurisdictional grounds.

4. There being no evidence to the contrary, the penalties assessed are found reasonable in amount.

#### CONCLUSIONS OF LAW

1. Appellant and respondent stipulated that, because of this Board's Order in PCHB No. 189, the violations here at issue were not of Regulation 1. Beyond that, the positions of the parties depart.

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 emitted into the atmosphere an odorous gas in such concentration as  
2 would exceed the limitation of Section 5.03 of Regulation 2. The six  
3 civil penalties assessed for the violations should be affirmed.

4 ORDER

5 1. The assessment of the ten civil penalties of \$150 each  
6 should be, and the same is hereby affirmed PROVIDED however, that payment  
7 thereof is suspended and no payment shall be due upon condition that  
8 appellant secure a consent order providing for a solution to the emission  
9 problem from SWAPCA within 90 days from the date of this Final Order, or  
10 failing that, apply for a variance 30 days thereafter.

11 2. The assessment of the six civil penalties of \$250 each should  
12 be, and the same is hereby affirmed.

13 DATED this 27th day of April, 1976.

14 POLLUTION CONTROL HEARINGS BOARD

15 Chris Smith  
16 CHRIS SMITH, Chairman

17 W. A. Gissberg  
18 W. A. GISSBERG, Member

19 Walt Woodward  
20 WALT WOODWARD, Member

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27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 Respondent contends that the more stringent opacity standards of  
2 WAC 18-04-040(1)(b) supersede Regulation 1, and therefore, civil  
3 penalties may be assessed for violations of the WAC provision.  
4 Respondent further contends that Regulation 2 was not covered by  
5 this Board's Order in PCHB No. 189. Appellant, on the other hand,  
6 contends that both Regulation 1 and 2 were covered by the Board's  
7 Order and, therefore, that no civil penalty should have been issued.

8 We feel it necessary to clarify the meaning of our prior Order  
9 in PCHB No. 189. We retained jurisdiction for the sole purpose of  
10 giving the parties a forum for the immediate resolution of disputes arising  
11 from paragraph 4 of our Order, i.e., the sampling program. It was never  
12 intended that we deprive Southwest Air Pollution Control Authority (SWAPCA)  
13 of its ability to enforce the law. Insofar as our previous decision can  
14 be interpreted as limiting SWAPCA's jurisdiction to enforce the law,  
15 we now modify it to retain jurisdiction only as to paragraph 4 of  
16 the Order.

17 2. Opacity violations: Appellant unlawfully caused or allowed  
18 to be emitted into the atmosphere an air contaminant of such opacity  
19 as would exceed the emission standards of Section 4.02 of Regulation 1  
20 and/or WAC 18-04-040(1)(b). Because both parties have been laboring  
21 under a misinterpretation of our Order, the assessment of the ten  
22 civil penalties for the violations should be affirmed but payment  
23 thereof suspended on condition that appellant use its best efforts to  
24 secure a consent order providing for a solution to the emission problem  
25 from SWAPCA, or failing that, apply for a variance.

26 3. Odor violations: Appellant unlawfully caused or allowed to be

27 FINAL FINDINGS OF FACT,  
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For Respondent: James D. Ladley, of Boettcher, LaLonde, Kleweno,  
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#### FINDINGS OF FACT

1. Pursuant to RCW 43.21B.260, respondent's Regulations 1 and 2 are noticed. Section 2.10 of Regulation 1 and Section 2.04 of Regulation 2 provide for a civil penalty of up to \$250 per day for the violation of each regulation.

2. The material facts in these matters are not in dispute. Appellant admits that it caused the emission of an air contaminant which violated Section 4.02 of Regulation 1 and/or WAC 18-04-040(1)(b) on the following days: September 22, October 10, 15, 30, November 5, 26, and December 2, 29 of 1975; January 26 and February 23 of 1976. For each of these violations, appellant was assessed a \$150 civil penalty which it appealed to this Board on jurisdictional grounds.

3. Appellant admits that it caused the emission of an odorous gas which violated Section 5.03 of Regulation 2 on the following days: September 5, 8, 9, 11, 22, and 24 of 1975. For each of these violations, appellant was assessed a \$250 civil penalty which it appealed to this Board on jurisdictional grounds.

4. There being no evidence to the contrary, the penalties assessed are found reasonable in amount.

#### CONCLUSIONS OF LAW

1. Appellant and respondent stipulated that, because of this Board's Order in PCHB No. 189, the violations here at issue were not of Regulation 1. Beyond that, the positions of the parties depart.

FINDINGS OF FACT,  
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1 Respondent contends that the more stringent opacity standards of  
2 WAC 18-04-040(1)(b) supersede Regulation 1, and therefore, civil  
3 penalties may be assessed for violations of the WAC provision.  
4 Respondent further contends that Regulation 2 was not covered by  
5 this Board's Order in PCHB No. 189. Appellant, on the other hand,  
6 contends that both Regulation 1 and 2 were covered by the Board's  
7 Order and, therefore, that no civil penalty should have been issued.

8 We feel it necessary to clarify the meaning of our prior Order  
9 in PCHB No. 189. We retained jurisdiction for the sole purpose of  
10 giving the parties a forum for the immediate resolution of disputes arising  
11 from paragraph 4 of our Order, i.e., the sampling program. It was never  
12 intended that we deprive Southwest Air Pollution Control Authority (SWAPCA)  
13 of its ability to enforce the law. Insofar as our previous decision can  
14 be interpreted as limiting SWAPCA's jurisdiction to enforce the law,  
15 we now modify it to retain jurisdiction only as to paragraph 4 of  
16 the Order.

17 2. Opacity violations: Appellant unlawfully caused or allowed  
18 to be emitted into the atmosphere an air contaminant of such opacity  
19 as would exceed the emission standards of Section 4.02 of Regulation 1  
20 and/or WAC 18-04-040(1)(b). Because both parties have been laboring  
21 under a misinterpretation of our Order, the assessment of the ten  
22 civil penalties for the violations should be affirmed but payment  
23 thereof suspended on condition that appellant apply to SWAPCA for  
24 a variance from the emission standards.

25 3. Odor violations: Appellant unlawfully caused or allowed to be  
26 emitted into the atmosphere an odorous gas in such concentration as

27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 would exceed the limitation of Section 5.03 of Regulation 2. The six  
2 civil penalties assessed for the violations should be affirmed.

3 ORDER

4 1. The assessment of the ten civil penalties of \$150 each  
5 should be, and the same is hereby affirmed PROVIDED however, that payment  
6 thereof is suspended upon condition that appellant apply for a variance  
7 from the violated emission standards within sixty days from the date  
8 that this Order becomes final.

9 2. The assessment of the six civil penalties of \$250 each should  
10 be, and the same is hereby affirmed.

11 DATED this 17th day of March, 1976.

12 POLLUTION CONTROL HEARINGS BOARD

13 Chris Smith  
14 CHRIS SMITH, Chairman

15 W. A. Gissberg  
16 W. A. GISSBERG, Member

17 Walt Woodward  
18 WALT WOODWARD, Member

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